International Longshoremen's and Warehousemen's Union, Local 14 *and* Sierra Pacific Industries. Case 20–CD–696

August 24, 1994

DECISION AND DETERMINATION OF DISPUTE

BY CHAIRMAN GOULD AND MEMBERS STEPHENS AND BROWNING

The charge in this Section 10(k) proceeding was filed February 11, 1994, by the Employer (SPI), alleging that the Respondent, International Longshoremen's and Warehousemen's Union, Local 14 (Local 14) violated Section 8(b)(4)(D) of the National Labor Relations Act by engaging in proscribed activity with an object of forcing the Employer to assign certain work to employees it represents rather than to SPI's unrepresented employees. The hearing was held April 5, 1994, before Hearing Officer Alan Nagata.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board affirms the hearing officer's rulings, finding them free from prejudicial error. On the entire record, the Board makes the following findings.

I. JURISDICTION

The Company, a California corporation with a place of business in Eureka, California, and various other facilities in northern California, is engaged in the manufacture of lumber and other wood products. During the calendar year 1993, the Company shipped from its various California facilities products, goods, and materials valued in excess of $50,000 directly to purchasers located outside the State of California. The parties stipulate, and we find, that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that Local 14 is a labor organization within the meaning of Section 2(5) of the Act.

II. THE DISPUTE

A. *Background and Facts of the Dispute*

A byproduct of lumber manufacturing is wood chips, which are used, inter alia, by paper manufacturers to make pulp. In the course of its lumber manufacturing operations, SPI produces wood chips, some of which it sold to Louisiana-Pacific (LP), another wood products concern, until October 1993.[1] The chips were transported from four to five of SPI's area mills by truck to the chip shipment facility at Samoa, California, on Humboldt Bay. On delivery to the Samoa facility, the chips became the property of LP.[2] Longshoremen employed by Westfall Stevedoring Company and represented for collective-bargaining purposes by Local 14 have always performed the chip-loading work at Samoa. Westfall performed this work pursuant to contractual arrangements between Westfall, barge and shipping companies, LP, and the other owners of the chips who arranged for their shipment.

Due to fluctuations in the market for wood chips, SPI decided that it would be more economically advantageous to sell its wood chips directly to a pulp manufacturer under a long-term arrangement, rather than to a company (such as LP) that sold the chips to yet another company. SPI thereafter entered into a sales agreement with James River Corporation for the wood chips that had previously been sold to LP. On October 1, SPI leased the 14th Street Dock in Eureka, California, also on Humboldt Bay, from Eureka Forest Products and began building a chip conveyor system at the facility so that wood chips could be shipped from the dock directly to James River's facility on the Columbia River.[3]

The sales agreement between SPI and James River provided that the chips became James River's property on their delivery to the stockpile at the 14th Street Dock. The sales agreement also provided that James River would arrange for barges, but the agreement provided that SPI would ensure that the stockpiled chips would be loaded onto barges. The price of chips to James River included a fee for handling the chips in the yard and for loading them onto the barge.

Once the chip conveyor became operational, SPI's employees became responsible for all aspects of handling the chips. Chip trucks from the SPI sawmills dump their loads in the yard at the 14th Street Dock and the chips are then stockpiled in the yard. When a

[1] All dates hereafter are in 1993 or early 1994, unless otherwise specified.

[2] The Samoa facility, known for many years as North Coast Exports, was purchased in January 1993 by LP.

[3] Before SPI leased the 14th Street Dock in October, the dock had been run by Vic Guynup and Sons. The dock was used exclusively for receiving logs and shipping out lumber. Guynup employed about 10 employees to handle the lumber and logs; they were not represented by any labor organization. Guynup's employees handled the sorting, storing, and staging of logs and lumber at the dock. Guynup's employees were responsible for all moving and staging of lumber from its arrival in the yard via truck from the mills, to placing it alongside a barge for loading. The barge company, which the customer contracted, would arrange with a stevedoring company to load the lumber onto the barge. Similarly, when a ship arrived loaded with logs at the 14th Street Dock, a stevedoring company, which the shipping company arranged, would offload the logs onto the dock alongside the ship. Guynup's employees would then be responsible for moving the logs into the yard for sorting, stockpiling, and transporting out to the sawmill.

When SPI took over the dock, it hired seven of Guynup's former employees and they continued handling the logs and lumber in the same manner. None of the logs received at the 14th Street Dock ever belonged to SPI or went to SPI sawmills for processing. Likewise, none of the lumber shipped out from the 14th Street Dock was produced by SPI.

barge arrives for loading, employees use front-end loaders to push the wood chips into the reclaim pit. The chips drop onto a conveyor belt located in the pit. The chips move up the conveyor system to the dock where they are loaded onto barges. The speed of the conveyor belt and the amount of wood chips loaded are controlled by the ''button man,'' who sits in a control booth about 60 feet above the conveyor belt.

On November 29,[4] when the first barge arrived at the 14th Street Dock to be loaded with wood chips, Local 14 picketed outside the gate to the dock with signs reading, ''Unfair to the ILWU.'' In a meeting that day with Andy Westfall and Ed Bond, SPI's human resources manager and manager of corporate affairs, Local 14 officials said that loading chips was their jurisdiction and that Local 14 wanted the work.

Each subsequent time barges were loaded,[5] Local 14 picketed outside the gate to the dock. On February 10, there were 30–40 pickets at the gate, some with signs saying, ''Sierra Pacific unfair to ILWU.'' Additionally, there were four or five picket boats in the harbor, each with signs and two pickets on board. The picket boats interfered with tugboat and barge activity. Later that day, Local 14 gave Ed Bond a press release which stated in part, ''[T]he work of loading the Barges is ours.''

During the time period from October through February, SPI officials met on numerous occasions with Andy Westfall and Local 14 officials to discuss resolving the matter. During these meetings, Local 14 maintained its position that the work of loading wood chips onto barges was Local 14's work. SPI maintained its position that Local 14's staffing requirements would make SPI's operation too expensive.

B. *Work in Dispute*

The parties agree, and we find, that the disputed work involves chip loading, or ''button man,'' work at SPI's 14th Street Dock facility in Eureka, California. The button man controls the amount of wood chips transported on the conveyor belt and controls the speed of the conveyor belt from a control booth located approximately 60 feet above the conveyor belt.

C. *Contentions of the Parties*

The Employer contends that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated because Local 14 has demanded the disputed work and has picketed in support of its demand every time a barge has been loaded with wood chips at the 14th Street Dock. Moreover, the Employer argues that Local 14's representatives have threatened to cease unloading logs and loading lumber if the chip-loading work is not assigned to employees it represents. The Employer argues that the disputed work should be awarded to its own unrepresented employees based on employer preference and past practice, relative skills and training, and economy and efficiency of operations.

Local 14 contends that no jurisdictional dispute exists and that the notice of hearing should be quashed because this case is outside the scope of Section 8(b)(4)(D) and Section 10(k). Local 14 maintains that this case involves nothing more than its efforts to preserve the chip-loading work historically performed by employees it represents. Local 14 states that ''it simply desires that SPI do business with Westfall in order to preserve the chip loading work traditionally performed by Local 14's members.'' Local 14 also argues that the Employer created this dispute by diverting its wood chips to the 14th Street Dock and assigning traditional longshore work to its own employees, relying on *Longshoremen ILWU Local 62-B (Alaska Timber) v. NLRB*, 781 F.2d 919 (D.C. Cir. 1986). Local 14 additionally relies on *Teamsters Local 578 (USCP-Wesco)*, 280 NLRB 818 (1986), affd. 827 F.2d 581 (9th Cir. 1987); *Longshoremen ILWU Local 8 (Waterway Terminals)*, 185 NLRB 186 (1970), vacated and remanded 467 F.2d 1011 (9th Cir. 1972), on remand 203 NLRB 861 (1973); and *Teamsters Local 331 (Bulletin Co.)*, 139 NLRB 1391 (1962). Even assuming that reasonable cause exists to believe that Section 8(b)(4)(D) has been violated, Local 14 contends that the disputed work should be awarded to employees it represents based on collective-bargaining agreements, Board certification, area and industry practice, employer past practice, and relative skills and safety.

D. *Applicability of the Statute*

Before the Board may proceed with a determination of dispute pursuant to Section 10(k) of the Act, it must be established that reasonable cause exists to believe that Section 8(b)(4)(D) has been violated, and that the parties have no agreed-upon method for voluntary adjustment of the dispute.

The parties have stipulated that there is no agreed-upon method for voluntary adjustment of the work dispute. In addition, we find that reasonable cause exists to believe that a violation of Section 8(b)(4)(D) has occurred based on Local 14's picketing in support of its demand for the chip-loading work.

We reject Local 14's argument that this case involves work preservation. We note that before October 1993, the Employer simply sold and delivered its wood

[4] In October and November, Andy Westfall, an owner of Westfall Stevedoring Co., and SPI officials had numerous discussions concerning the possibility of SPI's subcontracting the chip-loading work to Westfall. Andy Westfall told SPI officials that his employees, represented by Local 14, performed the chip-loading work across the bay at the LP Samoa facility. He said that Local 14 was demanding SPI's chip-loading work.

[5] Barges were loaded December 8, 18, and 28; January 2, 5, 10, 14, 21, 27, and 28; and February 3 and 11.

chips to another company.[6] With its takeover of the 14th Street Dock, the Employer essentially embarked on a new business venture: storage, handling, and loading of wood chips. It must be emphasized that although Local 14-represented employees have performed chip-loading work at the Samoa facility and have loaded lumber and offloaded logs at the 14th Street Dock, employees represented by Local 14 have never performed chip-loading work at the 14th Street Dock. The Employer's assignment of the chip-loading work to its unrepresented employees was an original assignment of new work at a new location; therefore, Local 14's claim to the chip-loading work was an attempt to acquire new work, not to preserve old work. *Graphic Communications Local 732-C (Haddon Craftsmen)*, 308 NLRB 1190, 1192 fn. 4 (1992).

Local 14's reliance on *Longshoremen ILWU Local 62-B (Alaska Timber) v. NLRB*, 781 F.2d 919 (D.C. Cir. 1986), is misplaced. *Alaska Timber* involved a change by the employer from selling lumber products on FAS basis to FOB basis. FAS (free along side) basis meant that the employer sold the lumber with delivery alongside the ship at the employer's dock included. The customer would then assume responsibility for loading the products onto the ship by arranging with a stevedoring company to load the ship. FOB (free on board) basis meant that the lumber was sold to the customer with the costs and responsibility of loading the ship included in the price. The District of Columbia Circuit held that there was no jurisdictional dispute within the meaning of Section 8(b)(4)(D) and Section 10(k), finding that the employer created the dispute when it alone made the decision to change from FAS to FOB sales, thus effectively reassigning the work from the stevedoring company to its own employees.

There is an important distinction between *Alaska Timber* and the instant case. The work of loading the employer's lumber products in *Alaska Timber* had always existed at the employer's dock and the employer, when selling FAS, chose not to perform it. The need for the work to be done remained constant. By contrast, until October 1993, SPI never had a chip-loading dock facility and, consequently, never had an opportunity to elect or decline to perform the work. As stated above, SPI's assignment of the chip-loading work to its own employees was the original assignment of new work at a new location.

Local 14's reliance on *Teamsters Local 578 (USCP-Wesco)*, 280 NLRB 818 (1986), affd. 827 F.2d 581 (9th Cir. 1987); *Longshoremen ILWU Local 8 (Waterway Terminals)*, 185 NLRB 186 (1970), vacated and remanded 467 F.2d 1011 (9th Cir. 1972), on remand 203 NLRB 861 (1973); and *Teamsters Local 331 (Bulletin Co.)*, 139 NLRB 1391 (1962), is also misplaced. Each of those cases involved efforts to reclaim work lost when the employer entered into a subcontract with another employer or when the employer discontinued a subcontract and assigned the work previously performed by the subcontractor to its own employees. By contrast, in the instant case, the Employer has never subcontracted chip-loading work. Indeed, Local 14 is urging the Employer to subcontract the chip-loading work to Westfall so that Local 14-represented employees will be able to perform it. That chips originally produced by SPI may have been loaded by Local 14-represented employees at the Samoa facility is of no significance here. Local 14 performed the chip-loading work at Samoa pursuant to contractual relationships between stevedoring companies (with which Local 14 had a collective-bargaining agreement), barge and shipping companies, and the owners of the chips who arranged for their shipment. SPI retained no ownership interest in the chips and has never had a contractual relationship with Westfall Stevedoring or with Local 14.

For two additional reasons, we find no merit in Local 14's argument that the instant case does not involve competing claims of rival unions. First, it is well established that a jurisdictional dispute may arise between a union and a group of unrepresented employees. See, e.g., *Millwrights Local 1026 (Intercounty Construction)*, 266 NLRB 1049, 1051 (1983). Second, we have long held that a group of employees performing work is evidence of their claim to that work, even absent an explicit claim. *Operating Engineers Local 926 (Georgia World)*, 254 NLRB 994, 996 (1981).

We find reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred and that there exists no agreed-upon method for voluntary adjustment of the dispute within the meaning of Section 10(k) of the Act. Accordingly, we find that the dispute is properly before the Board for determination, and we deny Local 14's motion to quash the notice of hearing.

E. *Merits of the Dispute*

Section 10(k) requires the Board to make an affirmative award of disputed work after considering various factors. *NLRB v. Electrical Workers IBEW Local 1212 (Columbia Broadcasting)*, 364 U.S. 573 (1961). The Board has held that its determination in a jurisdictional dispute is an act of judgment based on common sense and experience, reached by balancing the factors involved in a particular case. *Machinists Lodge 1743 (J. A. Jones Construction)*, 135 NLRB 1402 (1962).

The following factors are relevant in making the determination of this dispute.

[6] Once the chips were delivered to the Samoa facility, they became the property of LP.

1. Certification and collective-bargaining agreement

The parties stipulated, and we find, that there is no Board certification or bargaining order determining the collective-bargaining representative of SPI's employees performing the work in dispute. The record shows that SPI has never been a party to any collective-bargaining agreement with Local 14. Further, the record shows that SPI has never been a member of the Pacific Maritime Association (PMA) and is not subject to the Pacific Coast Longshore Contract Document, the collective-bargaining agreement between PMA and ILWU. Accordingly, we find that the factors of certification and collective-bargaining agreement do not favor awarding the disputed work to either group of employees.

2. Company preference and practice

The Employer prefers assigning the disputed work to its unrepresented employees, as has been its practice since it established the wood chip loading operation at the 14th Street Dock. Accordingly, we find that these factors favor awarding the disputed work to the Employer's unrepresented employees.

3. Area and industry practice

The evidence regarding area and industry practice indicates that button man work is performed by Local 14-represented employees at the LP Samoa facility across Humboldt Bay and, additionally, that ILWU-represented employees perform chip-loading work at Sacramento, California; Coos Bay, Oregon; and Portland, Oregon; Longview, Washington; and Tacoma, Washington. Accordingly, we find that these factors favor awarding the disputed work to employees represented by Local 14.

4. Relative skills

The evidence concerning relative skills is mixed. The record indicates that, because Local 14 employs a rotational dispatch system, all members of Local 14 have had some experience loading chips at the LP Samoa facility; however, the record shows that the chip-loading system at the Samoa facility is different from the system at the 14th Street Dock. The record also reveals that all of SPI's unrepresented employees have been trained and have performed the button man work since the conveyor system became operational. Accordingly, we find that this factor does not favor awarding the disputed work to either group of employees.

5. Economy and efficiency of operations

The record shows that SPI's unrepresented employees interchangeably perform all the functions necessary to carry out SPI's wood chip, lumber, and log operations at the 14th Street Dock, including operating heavy equipment, welding, button man, maintenance, and others. The record also shows that the Employer may reassign employees from one function to another function during the workday as needed. The Employer utilizes only one employee at a time as button man; Local 14 requires two button men per shift in order to provide a relief. The evidence indicates that Local 14-represented button men perform only that work and are not skilled in the other aspects of the Employer's work. The evidence also indicates that barge arrivals are somewhat unpredictable because of weather conditions; therefore, a Local 14-represented button man team may be waiting hours for a barge to arrive and have no work to perform in the meantime.

Accordingly, we find that this factor favors awarding the disputed work to the Employer's unrepresented employees.

Conclusions

After considering all the relevant factors, we conclude that SPI's unrepresented employees are entitled to perform the work in dispute. We reach this conclusion relying on employer preference and practice, and economy and efficiency of operations. In the circumstances of this case, we find that these factors outweigh the factors of area and industry practice, which favor an award to employees represented by Local 14. The determination is limited to the controversy that gave rise to this proceeding.

DETERMINATION OF DISPUTE

The National Labor Relations Board makes the following Determination of Dispute.

1. Employees of Sierra Pacific Industries who are not represented by any labor organization are entitled to perform the ''button man'' work at the 14th Street Dock in Eureka, California.

2. International Longshoremen's and Warehousemen's Union, Local 14 is not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force Sierra Pacific Industries to assign the disputed work to employees represented by it.

3. Within 10 days from this date, International Longshoremen's and Warehousemen's Union, Local 14, shall notify the Regional Director for Region 20 in writing whether it will refrain from forcing the Employer, by means proscribed by Section 8(b)(4)(D), to assign the disputed work in a manner inconsistent with this determination.